IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 17, 2006 Session

JACQUELYN TEAL SELLE, SURVIVING SPOUSE OF CURTIS MARSHALL SELLE, DECEASED v. FAYETTEVILLE AVIATION, INC., ET AL.

Appeal from the Circuit Court for Lincoln County
No. C0400038 Lee Russell, Judge

No. M2005-01185-COA-R3-CV - Filed on May 22, 2006

Surviving spouse sued nine Defendants in Lincoln County Circuit Court under the doctrine of strict liability, negligence, and breach of warranty in the manufacture, sale, and maintenance of the aircraft her husband was operating at the time of his death. The trial court dismissed an Indiana corporate Defendant who sold the aircraft to Decedent's employer for lack of personal jurisdiction. Plaintiff appealed and we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

William S. Fleming, Columbia, Tennessee, and Daniel Barks, Arlington, Virginia, for the appellant, Jacquelyn Teal Selle.

Raymond W. Fraley, Jr., and Johnny D. Hill, Jr., Fayetteville, Tennessee, for the appellee, Eagle Creek Aviation Services.

OPINION

On March 27, 2003, Curtis Marshall Selle departed from Mount Pleasant, Tennessee, in his employer-provided 690-B Aero Commander Airplane. Unfortunately, Mr. Selle never reached his intended destination because he was killed when his plane crashed near Homerville, Georgia. Jacquelyn Teal Selle, a resident of Tennessee, filed a complaint in Lincoln County Circuit Court on March 4, 2004, as the surviving spouse of Decedent, against nine (9) Defendants including Eagle Creek Aviation Services ("Eagle Creek") under the doctrine of strict liability, negligence, and breach of warranty in the manufacture, sale, and maintenance of the airplane.

Eagle Creek is an Indiana corporation whose headquarters are located in Indianapolis, Indiana. In November 2001, Eagle Creek entered into negotiations with Mr. Selle's employer,

Haulers Insurance Company ("Haulers"), a Tennessee corporation located in Columbia, Tennessee, for the purchase of the aircraft at issue in this matter and two engines to be installed on the plane at a later date. There were numerous telephone calls made between the parties during the ensuing negotiations; however, the contract evidencing the sale was mailed to Haulers' office in Columbia and then returned by mail to Eagle Creek in Indianapolis after it was signed. The contract provided that the sale was governed by the law of Indiana.

Haulers took delivery of the plane and utilized it until February 21, 2002, when Haulers' pilot flew the plane to Eagle Creek's offices in Indiana to have the new engines installed. When the installation was complete on April 4, 2002, Haulers' pilot flew the aircraft back to Columbia, Tennessee. During this time, Haulers also sent their pilots, including the Decedent, to Eagle Creek's Indiana office for training. The trainings were performed by pilots which Eagle Creek had referred, and the pilots were usually paid directly by the pilot's employer as opposed to payment through Eagle Creek's payroll.

Haulers' business transactions with Eagle Creek were not limited to the November 2001 sale. In December 1996, Haulers purchased an interest in a 1973 690-A Aero Commander from Eagle Creek. Haulers sold the 1973 plane back to Eagle Creek in July 2001 and purchased an interest in a 1979 690-B Aero Commander. Haulers' interest in the 1979 690-B Aero Commander was later used as a down payment on the 690-B Aero Commander which is the aircraft at issue in this litigation.

Eagle Creek has also engaged in business with other Tennessee companies. The FAA Registry lists Eagle Creek as the service center for seven (7) aircraft registered in Tennessee. In addition, Eagle Creek has entered into business transactions with Tennessee companies Corporate Flight Management, Nashville Jet Center, and Smyrna Air Center. Eagle Creek has also sold parts to fourteen (14) aircraft companies in Tennessee. Finally, Eagle Creek advertises in *Trade-A-Plane*, a nationally distributed publication based in Crossville, Tennessee, and through the Internet.

On April 21, 2004, Eagle Creek filed a motion to dismiss pursuant to Rule 12.02(2) of the Tennessee Rules of Civil Procedure, alleging that the Circuit Court of Lincoln County lacked general or specific jurisdiction. The trial court entered an order on April 12, 2005, granting Eagle Creek's motion to dismiss. Mrs. Selle appeals the judgment of the trial court raising the sole issue of whether the court erred in determining that it lacked personal jurisdiction over Eagle Creek. Because this determination is solely a question of law, the Court reviews the record *de novo* with no presumption accorded to the trial court's findings below. *Southwest Williamson County Cmty. Ass'n v. Saltsman*, 66 S.W.3d at 872, 876 (Tenn.Ct.App.2001).

"The plaintiff in an action bears the burden of establishing a *prima facie* case that exercising personal jurisdiction over the defendant is proper." *Mfrs. Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 854 (Tenn.Ct.App.2000). The trial court is required to construe the pleadings and the affidavits in the light most favorable to plaintiff when deciding a defendant's motion to dismiss for lack of personal jurisdiction. *Rodell*, 42 S.W.3d at 854. "Under this standard, dismissal is proper

only if all of the specific facts alleged by the plaintiff collectively fail to state a *prima facie* case for jurisdiction." *Rodell*, 42 S.W.3d at 855.

Tennessee's long-arm statute, Tennessee Code Annotated section 20-2-201(a), confers jurisdiction to the fullest extent allowable under the due process clause of the Fourteenth Amendment to the United States Constitution. *Southland Express, Inc. v. Scrap Metal Buyers of Tampa, Inc.*, 895 S.W.2d 335, 338 (Tenn.Ct.App.1994). In order for a court to assert *in personam* jurisdiction over a defendant, due process requires that the defendant have certain minimum contacts with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945); *J.I. Case Corp. v. Williams*, 832 S.W.2d 530, 531-32 (Tenn.1992).

Courts recognize two types of *in personam* jurisdiction, the first of which is general, where the state exercises jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the state. *Helicopteros Nacionales De Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984). In order for a plaintiff to establish general *in personam* jurisdiction, the plaintiff must show that the defendant maintains "continuous and systematic" contacts with the foreign state. *Int'l Shoe Co.*, 326 U.S. at 317, 66 S.Ct. at 159; *J.I. Case Corp.*, 832 S.W.2d at 532. Tennessee courts have developed a five-prong test in order to evaluate the contacts between a defendant and the forum state. *Masada Inv. Corp. v. Allen*, 697 S.W.2d 332, 334 (Tenn.1985).

The *Masada* test developed by our Supreme Court weighs: (1) the quantity of the contacts between the defendant and the forum state; (2) the nature and quality of those contacts; (3) the relationship between those contacts and the cause of action; (4) the interest of the forum in adjudicating the dispute; and (5) the convenience of the forum state to the parties. *Masada Inv. Corp.*, 697 S.W.2d at 334. If the court determines that general *in personam* jurisdiction exists, the weight of the factors should show that the defendant, through its conduct or connection to the forum state, could "reasonably anticipate being haled into court." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

Applying the *Masada* factors to the case at bar, we agree with the trial court that Mrs. Selle failed to establish a *prima facie* case of general *in personam* jurisdiction. The quantity and quality of Eagle Creek's contacts with the state of Tennessee are irregular at best. Although Eagle Creek is the largest service center for Twin Commander Aircraft in the United States, Eagle Creek and Haulers' business relationship includes only three (3) transactions; and, in each instance, the negotiations, delivery, and maintenance of the aircraft occurred primarily if not completely in Indiana. Furthermore, after searching 30,000 company records, Eagle Creek has only conducted business with three (3) other Tennessee companies and sold parts to fourteen (14) Tennessee companies. None of these customers have open accounts, therefore the transactions appear to be isolated events. In addition, only three percent (3%) of Eagle Creek's annual advertising expenditures are used on advertisements which reach Tennessee and these advertisements are limited to a single nationally distributed publication. We would also note that Eagle Creek is not registered

to do business in Tennessee nor does it maintain an office in Tennessee. The corporation has no employees, vehicles, aircraft, telephone listing, mailing address, or bank accounts in the State.

With respect to the third prong of the *Masada* test, the acts of Eagle Creek which allegedly caused or contributed to Mrs. Selle's injuries occurred primarily in Indiana. Mrs. Selle's complaint asserts that her injuries resulted from the installation and maintenance of an allegedly defective fuel control unit and other related component parts on the aircraft operated by her husband at the time of his death. It is undisputed that the delivery and maintenance of the aircraft as well as the installation of the engines occurred solely in Indiana. The only conduct relating to Mrs. Selle's cause of action which arguably occurred in Tennessee was limited to correspondence between the parties through the mail and telephone calls placed from each parties' respective place of business.

Mrs. Selle asserts however that Tennessee should exercise jurisdiction in this matter because the losses sustained as a result of the crash were sustained in Tennessee and thus, the State has a substantial interest in adjudicating the dispute. Plaintiff misinterprets where her loss occurred. "[B]eneficiaries do not have an individual claim or cause of action for the wrongful death of the decedent. Instead, the beneficiaries may recover for their individual losses that arise pursuant to the right of action vested in the decedent." *Ki v. State*, 78 S.W.3d 876, 880 (Tenn.2002). We must therefore look to where Mr. Selle's cause of action against Eagle Creek originated. "A cause of action accrues when and originates where damages are sustained and are capable of ascertainment." *Elmore v. Owens-Illinois, Inc.*, 673 S.W.2d 434, 436 (Mo.1984). Undoubtedly, the repercussions of Mr. Selle's death are felt in Tennessee, however, the place that Mr. Selle's damages were sustained and capable of ascertainment was Homerville, Georgia.

Finally, with respect to the convenience of the forum state to the parties, Mrs. Selle asserts that the expense and inconvenience of litigating her claim against nine Defendants in various forums outweighs any inconvenience Eagle Creek may experience in litigating a case in a neighboring state. The Court sympathizes with Mrs. Selle's predicament and agrees that it is more desirable and practical to bring all Defendants together in one action rather than to create a multiplicity of suits. However, although convenience or inconvenience of the forum state should be considered in determining whether the constitutional requirements for jurisdiction have been met, convenience alone is insufficient to satisfy constitutional prerequisites. *See Roland v. Modell's Shoppers World of Bergen County, Inc.*, 222 A.2d 110, 114-15 (N.J.Super.Ct.App.Div.1966). Because we can find no basis other than the convenience of the forum to Mrs. Selle upon which to assert general personal jurisdiction over Eagle Creek, we must now consider whether Mrs. Selle established a *prima facie* case of specific jurisdiction.

The second type of *in personam* jurisdiction recognized by courts is specific, where a defendant's continuous and systematic activities in the forum state give rise to the liabilities sued upon. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182, 85 L.Ed.2d 528 (1985); *J.I. Case Corp.*, 832 S.W.2d at 532. In order to assert specific jurisdiction, the defendant must have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign." *Burger King Corp.*, 471 U.S. at 472, 105 S.Ct. at 2182 (citing *Shaffer v, Heitner*, 433

U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1997)). "[T]his 'fair warning' requirement is satisfied if the defendant has 'purposely directed' his activities at residents of the forum, *Keeton v. Hustler Magazine, Inc.* 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79 L.Ed.2d 790 (1984), and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King Corp.*, 471 U.S. at 472, 105 S.Ct. at 2182 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984)).

As we discussed earlier, the death of Mr. Selle allegedly resulted from the installation and maintenance of a defective fuel control unit. Eagle Creek installed and maintained the allegedly defective parts at its office in Indiana. All other contact between Eagle Creek and Haulers occurred over the telephone or through the mail. Even the contract for the sale of the aircraft was mailed to Haulers in Tennessee and later returned via mail to Indiana. Furthermore, Eagle Creek only advertises in nationally distributed publications and through the Internet; it does not advertise to nor solicit work from Tennessee residents.

> [T]he constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co. v. Washington, supra,* 326 U.S., at 316, 66 S.Ct., at 158. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 295, 100 S.Ct., at 566. Instead, "the foreseeability that is critical to due process analysis is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.*, at 297, 100 S.Ct., at 567. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958):
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> > "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."
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> This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 299, 100 S.Ct., at 568, or of the "unilateral activity of another party or a third person," *Helicopteros*

> *Nacionales de Colombia, S.A. v. Hall, supra,* 466 U.S., at 417, 104 S.Ct., at 1873. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223, 78 S.Ct., at 201; see also *Kulko v. California Superior Court, supra,* 436 U.S., at 94, n. 7, 98 S.Ct., at 1698, n. 7. Thus where the defendant "deliberately" has engaged in significant activities within a State, *Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 781, 104 S.Ct., at 1481, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn. v. Virginia,* 339 U.S., at 648, 70 S.Ct., at 929, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King Corp., 471 U.S. at 474-76, 105 S.Ct. at 2183-84.

There is no evidence in the record that Eagle Creek purposely directed its activities to Tennessee residents. The contacts between Eagle Creek and Tennessee relating to the present cause of action have been the result of Haulers' unilateral pursuit of Eagle Creek's services. The minor and attenuated contacts which Eagle Creek had with Tennessee during the negotiation of the contract and the installation of the new engines are insufficient to cause Eagle Creek to reasonably anticipate being haled into court in Tennessee. The Supreme Court further clarified the type of contacts sufficient to provide minimum contacts in cases involving contract negotiations in *Burger King Corp.*, where the Court stated:

> [W]e note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington, supra,* 326 U.S., at 319, 66 S.Ct., at 159, or on "conceptualistic theories of the place of contracting or of performance," *Hoopeston Canning Co. v. Cullen,* 318 U.S., at 316, 63 S.Ct., at 604. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.,* at 316-317, 63 S.Ct., at 604-605. It is these factors--prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing--that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

471 U.S. at 478-79, 105 S.Ct. at 2185.

Because the negotiations regarding formation of the contract occurred primarily in each parties' respective place of business, the future consequences of the contract contemplated performance by Eagle Creek almost exclusively in Indiana, and the terms of the contract were governed by Indiana law, we cannot say that Eagle Creek is subject to specific *in personam* jurisdiction in Tennessee. Having found no error below, the judgment of the trial court is affirmed, and costs of appeal are assessed against Appellant, Mrs. Selle.

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WILLIAM B. CAIN, JUDGE